LEGAL PROCEDURE

671 According to Hofmayr, Shilluk law "...is a law of tradition based on decisions of Nyikang and of previous kings."(1) He maintains that justice is very arbitrary and depends much on individual interpretation and custom. 692 The settlement chief has a court to which are brought cases which the *gol* leaders and the hamlet headmen feel unable to settle or which are too serious for them to judge. The accuser and accused appear before the settlement chief and the headmen is often called as witness, while the elders assist. In major disputes, or if the settlement chief's decision is appealed against, the matter is brought before the *reth*. Hofmayr further states that important cases are treated by him and his judgement is final.(2)

681 In the courts compensation is awarded for homicide and fines in cattle or goats, according to the seriousness of the offence, are imposed for disputing the *reth*'s judgement, refusing to pay royal tribute, wounding a royal prince or princess, for theft, robbery and sexual offences. Apart from minor offences it would appear that offenders were brought to court and tried, not so much for private wrongs as for public delicts or crimes coming under the general category of breaking the *reth*'s peace, disputing the *reth*'s judgement, breaking the *reth*'s and Nyikang's laws.

643 Information suggests that in practice in the past the *reth*'s judicial 682 authority was by no means undisputed. Hofmayr maintains that an order or 676 judgement of the *reth*'s court was executed by the *reth*'s bodyguard, which consisted of a number of youths who followed the king everywhere. According to the same authority "blood revenge is well known among the Shilluk and feuds do exist between persons, between families and also between villages."(3) The fine for homicide is 10 head of cattle; formerly a girl was taken instead of cattle. According to both Seligman and Hofmayr, 680 the *reth* kept the cattle but might give two or three cows to the family of the deceased as compensation. This practice is comparable to similar legal procedures in communities in which feuds still flourish and the central authority does not exercise very extensive political powers.

608 Intervention in a serious feud between two districts probably took the 645 form of the *reth* supporting one side against the other, and self-help, 692 sometimes back by the *reth*'s intervention, was possibly the means of obtaining compensation and settling disputes which were not willingly submitted by the two quarrelling parties to arbitration and the judgement of a court. On the other hand, a description of the settlement of a feud by Oyler suggests that the role of the *reth* is essentially that of peacemaker, but that his functions can only be exercised if the disputants are willing to make peace.(4) In this respect it would appear that the role of the *reth* is 711 comparable to that of other ritual and peacemaking functionaries among the Nilotes, such as the leopard-skin chief of the Nuer and the Dinka spear-chiefs.

(1) Hofmayr, *Die Schilluk*, 1925, p. 107.
(2) *Ibid.*
(3) *Ibid.*, p. 112.
(4) Oyler, *J.A.I.* 1930, Vol. III, No. 3, pp. 256-99.

'9:Howell E-5 (1937-1950) 1952 FJ23 Shilluk FJ23

further evidence, that such offences were treated as private delicts in the past, though nowadays, through the influence of the Government, penal sanctions may be applied.

Witchcraft

The Dinka and Nuer tell us that witches and other anti-social persons were sometimes dispatched by their victims or their kinsmen with the tacit consent of the community. Acts of homicide against persons whose actions threatened the integrity of the community were either not subject to restitutory sanctions at all, or the compensation demanded by their kinsmen was on a much reduced scale.[1] A similar attitude towards witches is to be found among the Shilluk, but again without the support of actual examples.

In the published literature there are references to persons described variously as witches, sorcerers, magicians, medicine-men, and possessors of the evil eye,[2] and their activities and methods are described, but there are few references to the way in which they were treated. The sanction applied to witchcraft is normally counter-magic consciously applied by the victim.

Hofmayr speaks of 'the *jal jat*, the evil-doer, his aim in life is to do harm, both to life and to property, either by natural means or others,' and adds that 'the *jal jat* works in the dark, but if he is caught, he will be severely punished. Often he is handed over to the people who kill him.' Hofmayr also speaks of the 'poison mixer' (again *jal jat*) who 'is hardly ever discovered. If he is caught, the people will lynch him on the spot and his relations will have to leave the district.'[3] Another passage mentions that the compensation for killing a person possessing the evil eye is only four head of cattle instead of ten. These references, supported by what the Shilluk have told me, suggest an attitude similar to that found among the Nuer and Dinka.

It might be expected that, if there were any greater development of concepts of public law, and if the *reth* performed formal judicial and executive functions, acts of this sort would be subject not to merely private retaliation with the consent of the community, but rather to repressive sanctions applied by the *reth* or his representatives. In fact there is no evidence of this. It may be noted in this connexion that there are instances recorded during the last thirty years of attempts to introduce alien cults which would clearly be subversive of the ritual status of the *reth* and, through him, of the religious foundations of Shilluk society. For this reason Shilluk who have openly practised the Dinka cult of Deng have been severely repressed.[4] There is good reason to believe that such activities would have been punished by death in the past and they are, by their very nature, public delicts amounting to acts of treason.

Conclusions

Much of the evidence so far quoted is unreliable, mainly because the authors have recorded impressions rather than facts. My own conversations with the Shilluk on the subject have been limited and perfunctory, and for this reason cannot provide

[1] For example, the Nuer *colh* or Ghost - see Howell and Lewis, 'Nuer Ghosts - a form of Witchcraft', *J.N.R.*, xxviii, 1945.

[2] *ajwogo*, magicians, *jal jat*, sorcerer, *yuak*, possessor of the evil eye. There are many references to the activities of such persons in Hofmayr, *Die Schilluk*. See also Oyler, E. S., 'The Evil Medicine Man', *S.N.R.*, 1920.

[3] Hofmayr, *op. cit.*

[4] See Willis, C. A., 'The Cult of Deng', *S.N.R.*, xxii, p. 190.

11: Oyler M-5 (ca. 1918)1919 FJ23 Shilluk FJ23

754 demands a large fee, usually a cow. The patient sits down near the person
755 who is to treat him. The latter says: «You have come near me, therefore you will not die». He then grinds up a bit of wood, and putting it in water, makes the patient drink it.

754 The spell of the evil eye may be cast in the presence of people, and all present even to the victim may be ignorant of what is being done, though it may be known. The man with the evil eye may be seen staring at the victim. For that reason the Shilluks do not like to have a person look them in the eye. When a person stares at a Shilluk, he usually averts his eyes, or protests.

683 When the evil eye has been cast on a person, he very seldom tries to
754 discover the identity of the person who bewitched him. Should the person boast of having done it, he will be fined as though he had killed a man. The victim may have seen the person staring at him, and directly accuse him of the act, but that is not always safe, as the case is brought before a medicine man. If the person accused of casting the evil eye shows fear he
● [627] is guilty, and must pay a fine equal to that paid for killing a man. If he shows no fear, it was a false accusation, and in that case the accuser must pay an equal fine for his false charge.

518 The motive for using the evil eye is usually envy or jealousy or anger,
754 for the evil eye always picks a shining mark, it does not fall on poor people, nor is a poor thing bewitched. A poor man may occasionally be the victim of the evil eye, but it is always an accident, as he has eaten food that has been bewitched to catch a richer person. They take some precautions to avoid the evil eye.

751 If a person has some very choice food, it is covered so that the evil eye
754 may not fall on it. Food is very often bewitched, but it is usually meat or fish that is tainted, and it is very seldom that food made from grain is affected. Food that has had the evil eye cast on it can be made fit to eat by giving some of it to a dog. They say that the dog takes off the eye. The milk of a cow that has been affected can be cleansed by taking some of it in a vessel, and pouring it on a fire. The fire is put out, and from that time the milk of that cow is safe to use. If these precautions are not taken, the food will cause nausea. After the nausea has passed, evil consequences may remain, or a person may be all right.

11: Oyler M-5 (ca. 1918)1919 FJ23 Shilluk FJ23

672 845 847 fears to trust his relatives-in-law lest they yield to the pleadings of the mother, and so he sends a messenger to see that the child is killed. Should the father permit the child to live, he is responsible for all the evil done by him. If the father is present, he gives immediate judgment, and if it is for death, the sentence is carried out immediately.

845 847 The helpless child is always killed in a certain way. A little basket is woven, and the child placed within, and then the top is also woven shut. The basket is then put in a boat, and taken to the middle of the river, where it is committed to the water. The basket is a necessity, as they think that the powers of the babe are such that without the basket to restrain him he would immediately swim ashore, and escape.

842 845 When the evil medicine man is not killed, his mother loses the power to become a mother again, and when she weeps for the death of the little one, her next child will be deformed in the same way.

682 If the father spares the child, and someone else kills it, the murderer must suffer the usual punishment for murder, which can usually be atoned for by a fine.

754 627 683 After an evil medicine man has reached maturity, he can not be openly killed except under certain conditions. The people of his village may tire of his evil practices and conspire to kill him accidentally. To accomplish that end they invite him to join them in the chase, and they manage to get him well to the front. When he is in the right position, they all throw at the animal, but he is their *real* target. When he falls, the men all cry out: "an accident", and no one is *responsible for his death. They do not seek* to kill such a person in their local fights lest their own side be thrown into disorder.

754 This occult power is not hereditary, but many think that the mother of an evil medicine man has some occult power, if her husband is not of that class. She does not work as the men do, and the majority seem to think that such a mother is not tainted.

The evil medicine man always works on his own initiative, and never at the request of another, and for that reason he never receives fees. He uses as his tools, owls, snakes, eggs, sodom apples, lizards, and crows. The medicine or power in these agents is the same as the power belonging to the man, and in action unite with his power to work evil.